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October 19, 2007

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Exclusive Service Contracts for the Provision of Video Services in Multiple Dwelling
Units and Other Real Estate Developments, *Notice of Proposed Rulemaking*, MB Docket
No. 07-51

Dear Ms. Dortch:

I represent Palmetto Dunes Property Owners Association, Inc., a property owners' association ("POA") on Hilton Head Island, South Carolina. Our POA has been following the news reports of the Commission's Notice of Proposed Rulemaking in the above-referenced matter with great interest, and submit these *ex parte* comments in order to draw the Commission's attention to a number of specific examples of an incumbent cable company claiming the exclusive right to provide cable service to a large group of homeowners. Indeed, the cable company in Hilton Head Island, Time Warner, claims that its exclusive right to provide service to certain of the communities is perpetual, and that customers in these communities will *never* be able to choose among competitive video providers.

In Hilton Head, the vast majority of residents live in planned, gated residential communities. When these communities were first developed, in some cases as many as 30 years ago, the developers entered into contracts with a local cable television provider that in some cases purported to grant the provider the exclusive right to offer cable service to the residents of the communities. For some communities, these contracts provided for a fixed term of years; in others, the contracts provided for an indefinite number of renewal terms.

More than two years ago, the local telephone company, Hargray, began offering video service via its telephone lines to the residents of a number of the communities on Hilton Head Island. The local cable company had by then transferred these operations to Adelphia, which demanded that Hargray cease offering its video service.

First Adelphia, and now Time Warner (which acquired these systems out of Adelphia's bankruptcy), have taken the position that the residents of these communities are tied to exclusive agreements that bar cable competition, either for many years or forever. The residents of a number of

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these communities, acting through their POAs, expressed frustration at being denied the benefits of video competition. My client was joined with Hargray in challenging Adelphia's (and now Time Warner's) position in court. While we believe that we will eventually be successful in challenging the legality of Time Warner's continued claim of exclusive right, we urge the Commission to take action and obviate the need for further protracted litigation.

Simply stated, the residents of our POA want what nearly every other consumer in the United States takes for granted—the right to purchase competitive video service from a provider who is willing to offer it. Time Warner can assert its claim to long-term (and in some cases perpetual) exclusivity only because of an accident of geography. If the 20,000 residents of the various planned developments on Hilton Head did not live in these types of communities, these residents would unquestionably have access to competitive service. Federal law flatly forbids exclusive franchises for cable service, and Hargray is offering competitive video service to the relatively small number of residents of Hilton Head that do not live in a planned real estate development.

Of the thousands of residents of Hilton Head that are subject to Time Warner's claims of exclusivity, few understood when purchasing their home that they were locked into a relationship with a single cable company. Even fewer imagined that their cable company would assert a perpetual right to be a monopoly provider of video services. Adelphia and now Time Warner have both argued that they need exclusivity in order to recover their investment, but the costs of building these systems has long ago been retired, and both Time Warner and Adelphia have long offered cable in those areas of the island where they do not have exclusive agreements. Moreover, these claims ring especially hollow in this case, given that Time Warner acquired the assets in question out of bankruptcy (and, indeed, is using that fact to attempt to avoid paying fees that it arguably owes the POA).

The majority of the residents of Hilton Head Island have now been denied the benefits of competition for more than two years. Ironically, this is not because there are no providers willing to offer service. It is instead only because the incumbent provider has thrown up a series of legal roadblocks to the onset of competition.

Our POA urges the Commission to act quickly and decisively to close the loophole that allows Time Warner to claim a perpetual, exclusive right to be the sole cable provider to many of the residents in Hilton Head Island. The Commission should declare what every lay person understands: These exclusive contracts are anti-competitive and foreclose choice. The residents of Hilton Head Island should not be forced to accept a single provider of video service when nearly every other American is free to choose among willing providers.

Sincerely,



Brian C. Pitts

cc: Mr. Wesley Warren (via e-mail)